



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/582,546

04/11/2007

Lutz Dorfmueller

10191/4684

4728

26646

7590

09/04/2009

KENYON & KENYON LLP

ONE BROADWAY

NEW YORK, NY 10004

EXAMINER

VALONE, THOMAS F

ART UNIT

PAPER NUMBER

2831

MAIL DATE

DELIVERY MODE

09/04/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/582,546

Applicant(s)

DORFMUELLER ET AL.

Examiner

THOMAS F. VALONE

Art Unit

2831

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 August 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☒ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 9-11 and 13-17.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Thomas F Valone/
Examiner, Art Unit 2831

Continuation of 3. NOTE: The amended limitation of a cross-section raises new issues that require further consideration, including the issue of new matter, since "triangular cross-section" does not seem to be compatible with the axis of the substrate element and lacks antecedent basis in the instant disclosure.

Continuation of 11. does NOT place the application in condition for allowance because: Regarding the argument concerning the rejection under 35 USC 112-1st, and the "face" of the measuring electrodes as well as the "raised pattern" along the faces, both phrases seems to refer to new matter that is undiscernable as a result of a lack of antecedent basis in the specification. A "face" to one of ordinary skill in the art refers to a flat portion or as Merriam Webster's Tenth Edition defines it, "a front, upper or outer surface" or "the front of something having two or four sides." In this case, the drawings presented with the instant application are only a silhouette so no surface, except a side surface, can be discerned. It is suggested that more detailed professional drawings showing a third dimension without introducing new matter may help to further prosecution of this case. Regarding the argument concerning the "raised pattern" limitation, this refers to amended claim language which is lacking antecedent basis in the specification and is addressed in the final Office Action: Berger clearly teaches a measuring electrode that has a raised pattern along a finger electrode (raised pattern 12 or 13 are along finger electrodes, Fig. 2-4) as in the amended claims 14, 15. Regarding the italicized, underlined and bold-faced argument alleging that neither Berger nor Ishida disclose a sensor for particles in gases that includes interdigitated finger electrodes of varying widths, Berger further teaches that the electrode width can vary, up to at most one-tenth of the distance of the electrodes (US equivalent, par. 35), which literally constitutes a varying width, to one of ordinary skill, in addition to the "INTERDIGITAL ELECTRODES" taught by Berger (US equivalent, par. 15) and the comb electrodes taught by Berger (12, 13, Fig. 1). Though the newly proposed limitation of a "cross-section" raises new issues, the argument regarding a triangular shape to the electrode (or "triangle form" as claimed) has been addressed in the final Office Action in the citation of Becker (col. 5, line 45-50 and col. 4, line 11) who teaches the same triangular concept for electrodes.